



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 25 2016

OFFICE OF CONGRESSIONAL  
AND INTERGOVERNMENTAL RELATIONS

The Honorable Lamar Smith  
Chairman  
Committee on Science, Space, and Technology  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to respond to the questions for the record following the April 28, 2016, hearing entitled, "*Examining EPA's Predetermined Efforts to Block the Pebble Mine, Part II.*" Enclosed are the Environmental Protection Agency's responses to the questions.

If you have any further questions, please contact me or your staff may contact Denis Borum at [borum.denis@epa.gov](mailto:borum.denis@epa.gov) or 202-564-4836.

Sincerely,

A handwritten signature in black ink, which appears to read "Nichole Distefano", is positioned above the printed name.

Nichole Distefano  
Associate Administrator

Enclosure

cc: The Honorable Eddie Bernice Johnson  
Ranking Member

Committee on Science, Space & Technology  
***"Examining EPA's Predetermined Efforts to Block the Pebble Mine, Part II"***  
**April 28, 2016**

Questions for the Record to:  
The Honorable Dennis McLerran, Administrator,  
U.S. Environmental Protection Agency, Region 10

Submitted by Ranking Member Eddie Bernice Johnson

- 1. Reports in the media, public statements by Pebble, and statements from Members made during the hearing, suggest that your Proposed 404(c) Determination for Bristol Bay bans the Pebble Partnership from building any mine in the region or from filing a 404 permit application.**
  - a) Please clarify the scope of the Proposed Determination and the specific restrictions it places on the proposed Pebble Mine in Bristol Bay.**
  - b) Does EPA's use of its 404(c) authority in this case constitute a ban or "veto" of any mining activity in the defined region?**
  - c) Could there be mining activity in Bristol Bay even with the proposed 404 (c) restrictions on waterways?**

Response: The Bristol Bay watershed is unique, representing one of the Western hemisphere's most productive and vulnerable watersheds. The economic and cultural value of the Bristol Bay watershed is immense: it supports about 14,000 part-time and full-time jobs, and generates an estimated \$480 million in direct, annual, economic expenditures and sales. The University of Alaska estimated that the cumulative activities associated with harvesting, processing, and retailing Bristol Bay salmon result in approximately \$1.5 billion annually in economic value across the United States.<sup>1</sup> In addition, for over 4,000 years, it has served as a significant subsistence fishery to Alaska Native people, who may be among the last remaining salmon-based, subsistence cultures in the world. On July 21, 2014, after holding numerous public comment meetings that were attended by approximately 2,000 people, and evaluating more than 1.1 million comments that were submitted on the draft Bristol Bay Watershed Assessment, Region 10 issued its proposal to protect one of the world's most valuable salmon fisheries from the effects that could result from the discharge of dredged or fill material associated with the construction and routine operation of a mine at the Pebble deposit. The proposed restrictions are outlined in a document called the Proposed Determination. The Proposed Determination outlines restrictions to avoid unacceptable adverse effects to waters in that area. Effects to waters include the loss of streams, loss of wetlands, lakes, and ponds, or alteration of streamflow in salmon supporting streams.

According to EPA records, losses of this nature and magnitude associated with mining the Pebble deposit as proposed would be unprecedented for the Clean Water Act Section 404 regulatory program anywhere in the nation. Degradation of these aquatic resources is likely to be even more pronounced,

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<sup>1</sup> [http://www.iser.uaa.alaska.edu/Publications/2013\\_04-TheEconomicImportanceOfTheBristolBaySalmonIndustry.pdf](http://www.iser.uaa.alaska.edu/Publications/2013_04-TheEconomicImportanceOfTheBristolBaySalmonIndustry.pdf)



given the extensive cumulative impacts expected with successive stages of mine expansion.

This Proposed Determination is not a "veto" or ban on mining activity in the covered area. Rather, this Proposed Determination addresses where and at what levels the discharge of dredged or fill material related to mining the Pebble deposit could result in unacceptable adverse effects on the important water resources near the deposit. Moreover, it does not prevent or preclude Pebble Limited Partnership from filing any permit applications, including a Clean Water Act Section 404 permit application.

Importantly, the Proposed Determination is not a final action. However, even if its restrictions are ultimately finalized, it will not amount to an outright ban on all mining activity; proposals to mine the Pebble deposit that have impacts below each of these restrictions could proceed to the Section 404 permitting process with the U.S. Army Corps of Engineers.

The EPA has consistently demonstrated its willingness to collaborate with federal and state regulatory agencies and mining companies to ensure that projects can move forward in ways that protect water quality and the health of communities.

For over a decade, both Northern Dynasty Minerals and the Pebble Limited Partnership have asserted that submission of a permit application was imminent. The Pebble Limited Partnership has not submitted a permit application, which has been an enormous frustration to many in the Bristol Bay watershed area. At any point over these years, up to today, the Pebble Partnership could apply for a 404 permit with the Corps of Engineers and initiate the NEPA process. Yet the Pebble Partnership has chosen not to submit an application.

- 2. Retired EPA Ecologist Phil North was a focus of discussion at the April 28th hearing. Allegations of collusion put forward by Pebble Limited Partnership, and some Majority Members of the Committee, appear to be based on a fundamental misunderstanding of both Mr. North's job responsibilities and the extent to which he could have influence over you and other decision makers at EPA. Specifically, Mr. Tom Collier, the CEO of Pebble, has alleged, in the media, that Mr. North colluded with "anti-mine" organizations, and influenced EPA to conduct a 404(c) action to block the mine.**
  - a) What were Mr. North's job responsibilities? Would he have reason to be in contact with any outside organizations, like Pebble or Native Alaskan tribes, as a result of his work? If so, please describe the nature and purpose of these contacts.**
  - b) Please describe the nature of any interactions you may have had with Mr. North. Specifically, when were you made aware of Mr. North's opinion as to the use of 404(c) to protect the Bristol Bay Watershed, and, how was his opinion communicated to you?**
  - c) Were you aware of anyone else within Region 10 who had an opinion on this issue? If so, did they agree or disagree with Mr. North? Was it common for employees at EPA to have differences of opinion on matters before the Agency? How do these differences of opinions manifest in work products that may have been presented to you or to others within Region 10?**
  - d) Did Mr. North have the authority to initiate the Bristol Bay Watershed Assessment (BBWA) on his own?**

- e) **Did Mr. North have the authority to initiate a Section 404(c) action?**
- f) **Who has the authority to initiate either the BBWA or the 404(c) process?**
- g) **Can you please describe in detail how you came to the decision to conduct the BBWA, and subsequently the Section 404(c) action?**
- h) **Did initiating the 404(c) process require you to conduct the Bristol Bay Watershed Assessment first?**
- i) **You initiated the 404(c) process in February 2014 regarding the proposed Pebble Mine in Bristol Bay by writing the "15-day letter" to the Pebble Limited Partnership. Under the Clean Water Act's regulatory criteria could you have initiated the 404(c) process in regards to the proposed Pebble Mine in Bristol Bay in 2010 as Mr. North believed that EPA's leadership should have done? Ifso, why did you choose to proceed as you did?**

Response: The U.S. Army Corps of Engineers authorizes thousands of Section 404 permits every year, and the EPA works with the Corps and developers to resolve environmental concerns so projects can move forward. However, the Clean Water Act, specifically Section 404(c), also authorizes the EPA to prohibit or restrict fill activities if EPA determines a project would have unacceptable adverse effects on fishery areas.

In May of 2010, several federally recognized tribes from the Bristol Bay watershed in Alaska petitioned EPA to use its Clean Water Act Section 404(c) authority to restrict the discharge of dredged or fill material from the proposed Pebble Mine in the watershed. EPA also received similar requests from a diverse group of stakeholders, while others requested that EPA refrain from taking action. The groups that supported EPA's use of 404(c) were deeply concerned that the largest open pit mine in North America could potentially be opened within one of the western hemisphere's most productive and yet vulnerable watersheds.

There was a wide range of views within the Agency about how to proceed and a significant amount of deliberation among EPA staff. We ultimately decided to not initiate EPA's Section 404(c) authority at that time because we wanted to develop a solid understanding of the watershed -- and the potential risks associated with proposed mining activities -- before deciding whether or not to exercise our 404(c) authorities. Instead, on February 7, 2011, consistent with Clean Water Act Section 104, I announced EPA's intent to conduct an ecological risk assessment, the purpose of which was to characterize the biological and mineral resources of the Bristol Bay watershed, to increase understanding of the potential risks of large-scale mining on the region's fish resources, and to inform future decisions by government agencies and others related to protecting and maintaining the chemical, physical, and biological integrity of the watershed.

After three years of study, two rounds of public comment, and independent, external peer review, EPA released the Bristol Bay Watershed Assessment in January 2014. The Bristol Bay Watershed Assessment characterizes the significant ecological resources of the region and describes potential impacts on salmon and other fish from large-scale porphyry copper mining at the Pebble deposit. The Assessment established that the extraction, storage, treatment, and transportation activities associated with building, operating, and maintaining one of the largest mines ever built could pose significant risks to the unparalleled ecosystem that produces one of the greatest wild salmon fisheries left in the world.



After careful consideration of available science in the Assessment and other available information, including extensive materials provided by Northern Dynasty Minerals and Pebble Limited Partnership, I decided to proceed under EPA's Clean Water Act Section 404(c) regulations to initiate a process to protect Bristol Bay resources from the adverse environmental effects of large-scale mining the Pebble deposit. To be clear, in accordance with regular agency practice and policies, I made the decision to conduct the Bristol Bay Watershed Assessment and, subsequently, to initiate the 404(c) process.

The Inspector General recently concluded a 17-month comprehensive evaluation of EPA's Bristol Bay Watershed Assessment and found no evidence of bias in how EPA conducted the Bristol Bay Watershed Assessment. Mr. North was an EPA scientist who lived and worked in Alaska. As part of his job duties, Mr. North was expected to conduct outreach to and engage with federal, state, local, and tribal partners on protection and restoration of wetlands and other aquatic resources. In this capacity, Mr. North was a point of contact for Alaska Native villages and tribes. In the course of his job, and due to his expertise in aquatic resources, Mr. North provided information to tribes and stakeholders about the Clean Water Act and EPA's regulatory authorities. Mr. North was one of many EPA employees who contributed to the Bristol Bay Watershed Assessment. He had no decision-making authority regarding whether EPA would conduct the Bristol Bay Watershed Assessment or proceed with the Clean Water Act Section 404(c) process, and he retired before EPA finalized the Bristol Bay Watershed Assessment and before EPA issued the Proposed Determination.

Committee on Science, Space & Technology  
***"Examining EPA's Predetermined Efforts to Block the Pebble Mine, Part II"***  
**April 28, 2016**

Questions for the Record to:  
The Honorable Dennis McLerran, Administrator,  
U.S. Environmental Protection Agency, Region 10

Submitted by Representative Esty

1. **Mr. McLerran, many reports in the media and statements by Pebble have suggested that your Proposed Determination regarding the 404(c) in Bristol Bay bans the Pebble Partnership from building any mine in the region or from filing a 404 permit application. As we know, this is not what your Proposed Determination intends.**

**Several mine design scenarios in the final Bristol Bay Watershed Assessment found that the presence of a mine in Bristol Bay would destroy 94 miles of salmon streams and alter 33 miles of other streams within the watershed.**

**However, your Proposed Determination released in July 2014 did not ban Pebble from building a mine outright, rather it restricted the degree of damage a mine could cause, containing the damage to 5 miles of salmon spawning streams and less than 1,100 acres of wetlands, lakes or ponds where these fish live.**

- a. **Can you help clarify this issue for us? What exactly does your Proposed Determination do?**
- b. **Does the EPA's use of its 404(c) authority work as a ban on any mining activity?**
- c. **Now specifically in Pebble's case, does EPA's use of 404(c) authority "veto" any mining activity in Bristol Bay?**
- d. **Does this step, using 404(c), stop Pebble from filing permit applications?**
- e. **Could there be mining activity in Bristol Bay even with 404(c) restrictions on waterways?**

**Response: The Bristol Bay watershed is unique, representing one of the Western hemisphere's most productive and vulnerable watersheds. The economic and cultural value of the Bristol Bay watershed is immense: it supports about 14,000 part-time and full-time jobs, and generates an estimated \$480 million in direct, annual, economic expenditures and sales. The University of Alaska estimated that the cumulative activities associated with harvesting, processing, and retailing Bristol Bay salmon result in**

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